BILLY KRUMBEIN

IBLA 86-1439 Decided October 19, 1988

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting the high bid for competitive oil and gas lease NM 55153.

Affirmed.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

> When the Government rejects a competitive oil and gas lease high bid because the bid was less than its fair market valuation, the bidder must not only show that there is a lack of a rational basis for the decision or that BLM erred in formulating its fair market valuation, but he must also establish that his bid represents fair market value in order to be awarded the lease.

APPEARANCES: Billy Krumbein, pro se; Margaret C. Miller, Esq., Office of the Field Solicitor, and Keith Bennett, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

By decision dated January 31, 1983, the New Mexico State Office, Bureau of Land Management (BLM), rejected Billy Krumbein's bid of $26 per acre for parcel No. 41 at a competitive lease sale held on December 14, 1982. NM 55153. Appellant's bid was the highest of four bids submitted for that parcel.

In Billy Krumbein, 75 IBLA 216 (1983), we set aside and remanded BLM's decision because BLM had failed to provide a presale evaluation of the parcel.

> Neither the presale evaluation nor the method of calculation has been disclosed to appellant and the Board. We are unable to determine the correctness of the BLM decision without this information, nor are we able to determine why BLM recommended rejection of only some of the bids that did not exceed the presale estimates.

Id. at 218.

A memorandum dated April 29, 1986, from the Chief, Southwest Region Evaluation Team, to the Chief, Mineral Leasing Unit 1, indicates that BLM was unable to retrieve the original evaluation data which were put together prior to the transfer of responsibility for evaluating tracts for leasing from the Minerals Management Service (MMS) to BLM. The memorandum explains how appellant's bid was reevaluated on remand:

> We therefore, prepared a new appraisal based on 1982 information including reserve data available in 1982. Those reserve data disclosed interest in 1980-1982 focused on the Wolfcamp although the Queen, Strawn and Morrow are also noteworthy formations. These formations in this setting have wells that produced (or are capable of producing) from 150,000 to 5,000,000 Mcf of gas and/or from 15,000 to 75,000 barrels of oil. The appraisal was based on the income approach. * * *.
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> Based on that income analysis, an appraised value of $206 per acre, or $8,240 for the 40 acre parcel, was developed. This appraised value has been validated by leasing in the area in and after December of 1983 * * *. The value is also cross validated by data in the December 1982 edition (Volume 1, Number 6) of U. S. Lease Price Report (USLPR). The USLPR had a December 1982 range of prices for Lea County of (low) $75/acre; (most common) $200/acre; and (high) $400/acre. Thus, we conclude that Mr. Krumbein's bid of $26 per acre for Parcel 41 is inadequate and should be rejected. [Attachment omitted.]

In accordance with the foregoing recommendation, BLM again rejected appellant's bid by decision dated April 29, 1986. Appellant has again appealed.

In his statement of reasons, appellant asserts that BLM lost the original evaluation data and the new evaluation data was obtained 4 years after the fact and should not be used to evaluate his bid. BLM responds that it never lost the original evaluation data, but rather, it never had that data because the original evaluation was prepared by MMS before the transfer of lease evaluation functions into BLM. BLM states that there is no record that MMS transferred control of data to BLM.

Although we find it difficult to understand why the original MMS evaluation data are no longer available, as BLM points out the data used in the income evaluation were limited to data available in 1982, so the appraisal is not a "post-hoc" rationalization. Moreover, the use of postsale evaluations as a check on presale evaluations is an acceptable practice in the adjudication of competitive bids. Appellant's objection therefore provides no basis for reversing BLM's decision.

Appellant next contends that his bid was the highest of four bids and therefore established the fair market value of this parcel. Subsequent to the issuance of our prior decision in this appeal, we re-analyzed the burden faced by one who appeals a decision rejecting his bid and held that an appellant must not only demonstrate error in BLM's analysis, but must also meet

an affirmative obligation to establish that its bid is a reasonable reflection of fair market value. Viking Resources Corp., 80 IBLA 245 (1984). The Board referred to two court decisions which upheld bid evaluation procedures for leases on the Outer Continental Shelf which were quite similar to those used in evaluating bids for onshore leases. Superior Oil Co. v. Watt, 548 F. Supp. 70 (D. Del. 1982); Kerr McGee Corp. v. Watt, 517 F. Supp. 1209 (D.D.C. 1981). In Superior Oil Co. v. Watt, the court endorsed a postsale evaluation procedure in which an average value was calculated from BLM's evaluation together with all the bids submitted for a given parcel. If the high bid was above this average, but still below BLM's presale estimate of value, it was designated a "problem bid" which BLM was under no obligation to accept. The court observed: "[I]t is not unreasonable to reject a problem bid when too few bids are received on that tract." Id. at 74. In the instant appeal, appellant's bid is not even high enough to qualify as a problem bid. The average of BLM's estimate of the parcel and all of the other bids is $2,298.64, more than twice the amount of appellant's bid.

Appellant also objects to BLM's use of an income approach in evaluating the parcels because BLM has no way of knowing beforehand if a well can be produced on a property. Appellant believes that an income approach should be used in selling a producing well or field but not to evaluate a lease bid. In Viking Resources, supra, we endorsed BLM's use of an income approach, which BLM terms a Discounted Cash Flow analysis. BLM's estimate of value takes into account the level of probability that a successful well will be completed so that the risk that a discovery will not be made is factored into BLM's estimate.

In our prior decision, we observed that the Secretary of the Interior has discretionary authority to reject the high bid in the competitive oil and gas lease sale if the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. Billy Krumbein, supra at 217. We observed that the bidder must be provided with an explanation for the factual basis of the decision sufficient for the Board to determine the correctness of the decision if disputed on appeal. Id. at 218. Because BLM had not disclosed its presale evaluation of the parcel, we remanded the case to BLM for further adjudication.

[1] However, we have recently observed that even where BLM fails to provide a rational basis for rejection or where the bidder shows error in the BLM evaluation, the bidder must nevertheless show that its bid reasonably reflects fair market value. Miller Brothers Oil Corp., 100 IBLA 172 (1987); George H. Fentress, 99 IBLA 184 (1987); Read & Stevens, Inc., 98 IBLA 268, 270 (1987); see also Southern Union Exploration Co., 97 IBLA 275 (1987); Suzanne Walsh, 96 IBLA 374 (1987). In this case, BLM's April 29, 1986, memorandum and attachments do provide a rational basis for its decision. Appellant makes no argument in support of the conclusion that his bid represents fair market value other than the fact that his bid was the highest of four bids for the parcel. He has failed to offer any evidence tending to show his bid of $1,040 represented fair market value. As we have indicated above, such showing as he has made is not legally sufficient to obtain award of the lease for which his bid was made. Superior Oil Co. v. Watt, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge